enforced. Even if the expression could be construed to mean for a period of more than a year it could not be for a longer period than 30 years according to section 47 of the Land Code and the lease would require registration under section 116 of the Land Code. In my view the action must fail for the contract upon which it was based was void. Even if there had been a valid contract the appellant had been given reasonable notice to vacate.

The appeal is therefore dismissed with costs.

Azmi C.J. (Malaya): I have had the advantage of reading the judgment of the Lord President. I agree that the appeal be dismissed with costs.

MacIntyre J.: I have had the advantage of reading the judgment of the Lord President in this appeal and I am in entire agreement with it.

Appeal dismissed.

Solicitors: *Gibb & Co.; Dharmananda & Co.*

ABU BAKAR v. MOHAMED ZAIN

[O.C.J. (Yong J.) November 2, 1966]

[Alor Star — Election Petition No. 5 of 1965]

Practice and Procedure — R.S.C 1957 — Application to election cases — Application to amend petition.

Election Petition — Application to amend petition — Discretion of court — R.S.C., 1957.

The petitioner at the hearing of the petition and after it had been heard for two days applied to amend it for the purpose of introducing incidents of threats in a particular village. Counsel for the respondent objected on the ground that such amendment would introduce a new cause of action against the respondent.

Held: (1) subject to sections 38(2) and 42(2) of the Election Offences Ordinance, 1954, and the Election Petition Rules, 1954, the Rules of the Supreme Court, 1957, are applicable in election cases in Malaya and therefore the court has a discretion to allow a party to amend its pleadings;

(2) in the circumstances of this case, as the application for leave to amend was made at a late stage of the proceedings and as the petitioner had not shown any justification for doing so, the application for amendment must be refused.

Cases referred to:—

(1) *Steward* v. *North Metropolitan Tramways Co.* (1886), 16 Q.B.D. 556.

(2) *Hipgrave* v. *Case* (1885) 28 Ch. D. 356.

(3) *Loutfi* v. *Czarnikow Ltd.* [1952] 2 All E.R. 823.

ELECTION PETITION.

Wan Mustapha bin Haji Ali for the petitioner.

Zahir bin Haji Ismail for the respondent.

Cur. Adv. Vult.

Yong J.: The petitioner (Abu Bakar bin Omar) asks this court for a declaration that the respondent (Mohamed Zain bin Ahmad) had not been duly elected or returned and that the election was void on the ground that he (the respondent) had on August 19, 1965 (election day) at 2.40 a.m. gone to Kampong Ason, Jitra, and there induced one Baharum bin Hassan to vote for the Alliance and threatened him that if he voted for the Pan Malayan Islamic Party he would be arrested or imprisoned.

The petitioner made a further general allegation that between darkness and dawn before the election day, the respondent corruptly influenced voters to refrain from voting in favour of the petitioner. This general allegation which gave no particulars in spite of requests from the respondent, was later in the proceedings withdrawn by petitioner's counsel.

After the petition had been heard for two days and evidence of many witnesses recorded, the petitioner's counsel applied for amendment of para 4 of his petition for the purpose of introducing incidents of threats in the village known as Kampong Meribut. Counsel for respondent strongly objected on the ground that such amendment would be introducing a new cause of action and a new charge against the respondent and that such amendments should not be allowed. In support of his contention he referred the court to two passages in *Doabia's* Indian Election Cases 1935 — 1950, Volume II, page 236, which reads as follows:—

"Particulars — Undue influence — Villages where committed not mentioned in the petition — their mention cannot be allowed subsequently as this would constitute addition of new instances.

There is abundant authority that a fresh instance of a corrupt practice cannot be regarded merely as an amendment of the particulars of such corrupt practice. Each single instance of corrupt practices stated to have been committed at certain villages which were not mentioned in the petition, constitutes fresh instances of corrupt practice . . . . It would thus appear that if at any time during the hearing of the petition, an application is made by the petitioner for addition of the names of new villages and of the persons alleged to have made use of the posters in these villages, that application will be liable to rejection, for the simple reason that it did not furnish further particulars of a corrupt practice already alleged in the petition but added to the substantial charge of corrupt practice contained in the petition."

And at page 323:—

"Particulars — New, cannot be supplied after expiry of the period of limitation for filing the petition.

When only vague allegations of corruption are made in the original petition, to allow specific particulars of those allegations to be furnished after the expiry of the prescribed period of limitation would in effect amount to the admission of a new petition which was time barred, and would involve the adoption of a procedure which the law does not contemplate."

On the other hand counsel for the petitioner contended that Indian authorities were not applicable since Indian election statutes are different from our Election Offences Ordinance, 1954 and that our Rules of the Supreme Court, 1957 should

be applied. For powers to grant amendments he referred the court to Order 28 rules 1 and 12.

(a) *Rule 1* provides that "The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

(b) *Rule 12* provides:— "The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings."

After giving careful consideration to the submissions made by both counsel I held that subject to sections 38(2) and 42(2) of the Election Offences Ordinance, 1954 and the Election Petition Rules, 1954, the Rules of the Supreme Court, 1957 are applicable in election cases in Malaya. The question is under what circumstances will the court exercise its judicial discretion to allow a party to amend its pleadings especially in election petition proceedings?

It is clear that Order 28 rules 1 and 12 (which are copied verbatim from the English *Annual Practice* 1957) give the court extensive powers to permit parties to amend their pleadings. It is equally clear that on the authorities cited therein, I am impelled to hold that if an application is made before the hearing leave is readily granted on payment of costs so occasioned. It will not however be granted if his opponent will be placed in a less favourable position than he would have been if the amended pleading had been delivered in the first instance or if some injury would be caused to his opponent for which he cannot be compensated by payment of costs. (*Steward* v. *North Metropolitan Tramways Co.*[1]). In the present case, by allowing the petitioner to amend would in effect amount to permitting him to file a fresh petition out of time and thus depriving his opponent of the benefit of the period of limitation under section 38 of the Election Offences Ordinance, 1954 and thereby causing him an injury which cannot be compensated by costs.

Moreover the court will not readily allow at the trial an amendment, the necessity for which was abundantly apparent long before the hearing and then not asked for. (*Hipgrave* v. *Case* [2]). In the present case, the petitioner's counsel knew or ought to have known of such necessity long before the hearing, as he had been asked by respondent's counsel to give particulars of paragraph 4 of his petition. The court will be reluctant to give leave to amend pleadings at a late stage of the proceedings, unless there is strong justification for so doing (*Loutfi* v. *Czarnikow Ltd.*[3]). In the present case the petitioner has not shown to the court strong justification least of all any justification.

At page 469 of the White Book (*Annual Practice* 1957) under the heading of "Particulars" under Order 28 rule 12 it is stated that:—

"An application to amend or add to particulars if made a reasonable time before the trial, will generally be allowed on terms (*Yorkshire Provident Co.* v. *Gilbert*, [1895] 2 Q.B. 148; *Emden* v. *Burns* 10 T.L.R. 400), unless some injury would be caused by such amendment which could not be sufficiently compensated by the payment of costs (*Clarapede* v. *Commercial Union Association*, 32 W.R. 262, C.A.)."

Under the circumstances the petitioner's application for amendment is therefore refused. In view of this it is not necessary for me to express my opinion whether Indian authorities are or are not applicable to election cases in Malaya, nor is it necessary to interpret the limitations placed on the powers of the court to permit amendments, by section 39(2) of the Election Offences Ordinance, 1954.

[The learned judge then proceeded to give a lengthy summary of the facts of the case and concluded:] On the evidence before me the petitioner has not proved to my satisfaction that Baharum had been threatened as alleged nor has he proved to my satisfaction that any corrupt practice had been committed by respondent or with his knowledge or consent or by any of his agents. Under the circumstances, the petition is dismissed with costs. I hereby certify that the respondent Mohamed Zain bin Ahmad has been duly elected and that his election is not void. A report will accordingly be transmitted to the Election Commission.

Petition dismissed.

Solicitors: *Wan Mustapha & Co.; Jayadeva, Zahir & Ismi.*

THE CITY COUNCIL OF GEORGE TOWN & ANOR. v. THE GOVERNMENT OF THE STATE OF PENANG & ANOR.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) November 3, 1966]

[K.L. — Federal Court Suit No. X.1 of 1966]

Constitutional Law — Conflict between Federal law and the State law — Whether Federal Court has jurisdiction to declare State enactment void — Courts of Judicature Act, 1964, s. 48(1) — Constitution of Malaysia, arts. 75 & 128.

Legislation — Conflict between Federal and State laws — Municipal Ordinance (Cap. 133), s. 398B.

The petitioners applied to the Federal Court for a declaration that the City Council of George Town (Transfer of Functions) Order, 1966 and the Municipal (Amendment) (Penang) Enactment, 1966 were void by virtue of article 75 of the Constitution of Malaysia on the ground that they were inconsistent with the Local